

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

Blue Spike, LLC,

Plaintiff,

v.

Texas Instruments, Inc. *et al.*,

Defendants.

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Case No. 6:12-cv-499-MHS

Lead Case

Jury Trial Demanded

BLUE SPIKE'S RESPONSE TO ACCU-TIME'S MOTION TO STRIKE [DKT. 768]

Accu-Time has asked the Court to strike Blue Spike's surreply (Dkt. 741) on the basis that it purportedly expands the complaint. *See* Dkt. 768. The Court should deny Accu-Time's motion to strike—which is an impermissible attempt to get the last word—for three reasons:

First, Accu-Time did not seek leave to file the motion, violating Local Rule CV-7(f), which requires leave of court for post-surreply filings.

Second, any fair reading of Blue Spike's surreply reveals that it did not “expand” the complaint; it merely paraphrased it. *Compare* Dkt. 741 *with* Case No. 6:13-cv-037, Dkt. 1; *see also* *Westfall v. Miller*, 77 F.3d 868, 870 (5th Cir. 1996) (rejecting pedantic interpretations and instead requiring “a fair and reasonable reading of the pleadings”).

Third, Accu-Time does not cite any law that supports striking Blue Spike's surreply. This is unsurprising given that in this District, which expressly allows surreplies as a matter of right (*see* L.R. CV-7(f)), there is no basis for striking a surreply in its entirety. Rather, only particular *parts* of a surreply are subject to

striking, namely, “arguments raised for the first time.” *Miles Bramwell USA, LLC v. Weight Watchers Int’l, Inc.*, No. 4:12-cv-292, 2013 WL 1797031, at *4 (E.D. Tex. Mar. 27, 2013), *report and recommendation adopted*, 2013 WL 1793934 (E.D. Tex. Apr. 26, 2013). As just explained, Blue Spike’s surreply does not raise any arguments for the first time, so no part of it would merit striking even if Accu-Time had properly sought leave or cited applicable authority.

For these reasons, Blue Spike respectfully asks the Court to deny Accu-Time’s motion to strike (Dkt. 768).

Respectfully submitted,

/s/ Randall T. Garteiser

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CERTIFICATE OF SERVICE

I, Randall T. Garteiser, am the ECF User whose ID and password are being used to file this document. I hereby certify that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on this day. Pursuant to Federal Rule of Civil Procedure 5, this document was served via U.S. Mail and electronic means to counsel for Defendant that are not receiving this document via CM/ECF.

/s/ Randall T. Garteiser
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